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OTHER HUMAN RIGHTS ISSUES

Written statement* submitted by Asia-Japan Women's Resource Centre, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 August 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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ENG

Comfort Women: Systematic rape, sexual slavery and slavery-like practices
The Women's International War Crimes Tribunal and Its Judgment

Asia-Japan Women's Resource Center (AJWRC), in cooperation with Violence Against Women in War Network Japan (VAWW-NET Japan), wishes to draw the attention of the High Commissioner for Human Rights and of the Sub-Commission the Promotion and Protection of Human Rights (the Sub-Commission) to the Women's International War Crimes Tribunal on Japan's military sexual slavery. Its proceedings were held in Tokyo in December 2000, and its Final Judgment delivered in The Hague in December 2001.

The Women's International War Crimes Tribunal

The Women's International War Crimes Tribunal (the Women's Tribunal) was global civil society's response to the failure of states to fully redress the crimes committed against the "comfort women". It was a Peoples' Tribunal based on the understanding that law is "an instrument of civil society". Women from countries and areas victimized by Japan's past aggression, and the perpetrating country Japan, formed the International Organizing Committee. Activists and legal experts from throughout the world served as advisors, prosecutors and judges. 64 survivors participated in the Tokyo Tribunal 2000. Two chief prosecutors, and prosecution teams from ten countries and areas including Japan itself, submitted evidence which included the testimonies of many survivors, expert witnesses, and two perpetrators, as well as archive materials such as official documents and personal diaries of the time.

The Judgment of the Women's Tribunal

In its Final Judgment (the Judgment), the Women's Tribunal found the Emperor Showa (Hirohito) and other high ranking officials of the Japanese military and government guilty of the crimes of rape and sexual slavery as crimes against humanity through the system of "comfort stations." It also held the State of Japan responsible for these crimes and liable for providing adequate reparations to survivors. It made various recommendations to the Japanese Government, the former Allies, the UN and the international community.

The Judgment is 1094 paragraphs or 265 pages long; the contents are as follows:

Part I	Introduction and Background of the Proceedings
Part II	Factual Findings
Part III	Applicable Law
Part IV	Individual Responsibility
Part V	Legal Findings and Verdicts
Part VI	State Responsibility
Part VII	Reparation
Part VIII	Conclusion

This Judgment is an important contribution to the human rights of past, present and future victims of armed conflict, especially to end impunity for wartime sexual violence and to the global history of justice at large.

The Tribunal's Factual Findings

The Judgment is the first comprehensive international document to assess detailed historical facts concerning the "comfort stations" system. It carefully examines how this system was introduced

and systematically expanded throughout the Asia-Pacific region, and brings the scale and gravity of damage to light through survivors' testimonies. Based on this comprehensive assessment, the Judgment confirms the system's "integral relation to the Japanese military aggression, as well as its sources in the prevailing misogynist and racist imperial culture" and recognizes the "incontrovertible evidence that the Japanese military cultivated a culture of oppression and violence, including sexual violence, against both men and women".

Rape and Sexual Slavery as Crimes against Humanity

The Judgment's careful examination of law from the 14th Century to the present day reveals that, although rape has been prohibited by laws of war since the Middle Ages, this prohibition was insufficiently explicit until the 1949 Geneva Conventions. This kept the crime invisible, cultivating a culture of wartime sexual violence. The post war trials, including the IMT in Nuremberg and IMTFE did not treat adequately the crimes of sexual violence. The claims brought by former "comfort women" have resulted in today's widespread recognition of the term "sexual slavery". The Judgment's elaborate examination and powerful recognition of these crimes as crimes against humanity will provide an invaluable precedent for the ICTY, the ICTR, and other future judicial bodies including the ICC.

Hirohito: the pronounced guilt of Head of State

The Judgment finds that the doctrine of sovereign immunity does not apply to responsibility for international crimes. Rejecting the claim that Emperor Hirohito was a mere figurehead, it acknowledges that, with his de jure and de facto power, he must have known about the "comfort women" system and should at least have stopped it, and therefore finds him guilty of the crimes of rape and sexual slavery as crimes against humanity. This people's tribunal is the first forum of law to adjudicate justice to Emperor Hirohito and, in fact, to pronounce a Head of State guilty.

Responsibility of the State of Japan

(1)Continuing Obligations and Violations of State Responsibility

The Judgment's "Continuing Obligations and Violations of State Responsibility" section should be highlighted for the Sub-Commission. These violations by the Japanese government include denial, concealment, distortion, failure to prosecute and punish those criminally responsible, refusal to provide reparations, failure to protect the integrity, well-being, and dignity of the whole human person, failure to take measures against discrimination rooted in nationalism, militarism, and gender, and failure to take measures to prevent recurrence.

The Judgment discusses appropriate forms of reparations to discharge the responsibility of a particular State. It fully examines, for instance, the Asian Women's Fund, which was set up to fulfil Japan's "moral responsibility," but finds that the fund "does not constitute an acceptable mechanism for compensating victims for the wrongs inflicted by the state."

The Judgment also discusses acceptable forms of apology. The Japanese Government's alleged apologies, which use language that avoids legal responsibility, and fail to directly address the affected individuals, are found deficient.

(2) The Principle of Obligation Erga Omnes

The Judgment's contribution to the international community at large can also be found in the following statements: "Crimes against humanity by definition are committed against individuals and not against states. Moreover, as obligations owed erga omnes, they constitute an offense

against the entire world community.""It is legally impossible for bilateral or multilateral agreements, even agreements concluded by the states of which the victims are nationals, to waive the interests of non-participating states in redressing a crime done to all." That this "all" refers to all individual members of the global community, rather than all States, deserves special emphasis.

Recommendations in the Judgement of the Women's Tribunal

With its moral authority, the Women's Tribunal makes recommendations based on its legal findings and the principles of human rights and justice. The Sub-Commission at 54th Session can ensure that Member states of the United Nations will serve the interests of their people by disseminating this Judgement, and implementing its recommendations. The Judgement's 17 recommendations include the following:

(1) To fulfil its responsibility, the Tribunal holds that the government of Japan must provide each of the following remedial measures:

1. Acknowledge fully its responsibility and liability for the establishment of the "comfort system", and that this system was in violation of international law.
2. Issue a full and frank apology, taking legal responsibility and giving guarantees of non-repetition.
3. Compensate the victims and survivors and those entitled to recover as a result of the violations declared herein through the government and in amounts adequate to redress the harm and deter its future occurrence.
4. Establish a mechanism for the thorough investigation into the system of military sexual slavery, for public access and historical preservation of the materials.
5 Identify and punish principal perpetrators involved in the establishment and recruitment of the "comfort women".

(2)The Tribunal further recommends that the former Allied nations:

1. Immediately declassify all military and governmental records concerning the establishment and operation of the "comfort" system and the reasons why it was not prosecuted before IMTFE.
2. Immediately declassify all military and governmental records concerning the failure to prosecute the Emperor HIROHITO before the IMTFE.
3. Acknowledge its own failures to investigate and prosecute the crimes committed against the former "comfort women" initially in the post war trials and since in the intervening 55 years.

(3)The Tribunal further recommends that the United Nations and all the states thereof:

1. Take all steps necessary to ensure that the government of Japan provides full reparations to the victims and survivors and those entitled to recover on account of the violations committed against them.
2. Seek an advisory opinion of the International Court of Justice as to the illegality and continuing liability of the government of Japan in regards to the former "comfort stations."

Finally, the Judgement reminds us that "while the names inscribed in history's page are often those of the men that commit the crimes, rather than the women that suffer them, this Judgement bears the names of the survivors that took the stage to tell their stories, and thereby, for four days at least, put wrong on the scaffold and truth on the throne."

Recommendations to the present Sub-Commission

1) The Sub-Commission should seize the opportunity of the Women's International War Crimes Tribunal Judgement to remind the government of Japan to discharge its state responsibility by implementing the recommendations.

2) The international community should accept the Tribunal's judgment as an official document of the 54th session of the United Nations Sub-Commission on the Promotion and Protection of Human Rights so as to best serve both the survivors and the State of Japan.